

William C. Rand, Esq.
LAW OFFICE OF WILLIAM COUDERT RAND
711 Third Ave., Suite 1505
New York, New York 10017
(Phone) (212) 286-1425; (Fax)(212) 599-7909
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X		
EUGENE LUMLEY,	:	ECF
Individually and on Behalf of All Other Persons	:	08 CV 3993 (TPG) (AJP)
Similarly Situated,	:	
	:	
Plaintiffs,	:	
	:	
-against-	:	
	:	
UNITED STATES TRUST COMPANY, N.A.,	:	
BANK OF AMERICA, N.A. and	:	
JOHN DOES #1-10, Jointly and Severally,	:	
	:	
Defendants.	:	
-----X		

DECLARATION OF WILLIAM C. RAND, ESQ.

I, William C. Rand, hereby declare under penalty of perjury that the following is true:

1. I, along with Berger and Gottlieb as co-counsel, am the attorney for the named plaintiff in this action. I make this declaration in connection with Plaintiff's Motion for Approval of Collective Action Notice, filed contemporaneously herewith.

2. The Plaintiff commenced this collective action on behalf of himself and on behalf of all others similarly situated by filing the Complaint on April 29, 2008.

3. Among other things, the Complaint seeks to recover on behalf of Plaintiff and other similarly situated current and former employees of Defendants unpaid overtime compensation of one and one-half times the regular rates at which they were employed

for hours they worked in excess of forty (40) hours per week. (Complaint at First Claim for Relief).

4. By the motion, Plaintiff requests the Court to approve and authorize mailing to potential plaintiffs of the proposed collective action notice attached hereto as Exhibit A and styled "Notice of Lawsuit with Opportunity to Join." In addition, Plaintiff requests the Court to approve the proposed consent form attached hereto as Exhibit B, for use by potential plaintiffs who elect to "opt-in" to this case pursuant to FLSA § 216(b), 29 U.S.C. § 216(b).

5. The proposed Notice of Lawsuit with Opportunity to Join (Exh. A) complies with the requirements for FLSA collection action notices enumerated by Magistrate Judge Lisa Margaret Smith in Gjurovich v. Emmanuel's Marketplace, Inc., 282 F. Supp. 2d 101, 106-109 (S.D.N.Y. 2003). Judge Smith's opinion in Gjurovich is to my knowledge the most exhaustive judicial consideration of the contents of FLSA collective action notices.

Dated: June 11, 2008

s/William C. Rand



William C. Rand
Attorney for Plaintiffs

William C. Rand, Esq.
LAW OFFICE OF WILLIAM COUDERT RAND
711 Third Ave., Suite 1505
New York, New York 10017
(Phone) (212) 286-1425; (Fax)(212) 599-7909
Attorneys for Plaintiffs

EXHIBIT A TO RAND DECLARATION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X		
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Individually and on Behalf of All Other Persons	:	08 CV 3993 (TPG) (AJP)
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UNITED STATES TRUST COMPANY, N.A.,	:	
BANK OF AMERICA, N.A. and	:	
JOHN DOES #1-10, Jointly and Severally,	:	
	:	
Defendants.	:	
-----X		

NOTICE OF LAWSUIT WITH OPPORTUNITY TO JOIN

**FROM: WILLIAM C. RAND-Attorney for Plaintiffs
Law Office of William Coudert Rand
711 Third Avenue, Suite 1505, New York, N.Y. 10017
(212) 286-1425**

**TO: Current and former employees of Bank Of America, N. A. and/or
United States Trust Company, N.A. ("Defendants"), who worked as
First Level Officers or in other similar non-managerial, non
administrative positions on or after February 11 , 2002.**

**RE: Fair Labor Standards Act Lawsuit filed against Bank Of America,
N. A. and United States Trust Company, N.A. and others, seeking
payment for overtime work**

I. INTRODUCTION

The purpose of this notice is to inform you of the existence of a collective action lawsuit in which you potentially are “similarly situated” to the named Plaintiff, to advise you of how your rights may be affected by this suit, and to instruct you on the procedure for participating in this suit.

The Lawsuit at issue was filed on April 29, 2008, against defendants Bank Of America, N.A. and United States Trust Company, N.A. and others in the United States District Court for the Southern District of New York. The Plaintiff alleges that the defendants violated the Federal Fair Labor Standards Act by not paying eligible employees time and one-half, or overtime compensation, for all hours worked in excess of 40 hours per week. The lawsuit is seeking back pay and double liquidated damages from the defendants, as well as costs and attorney’s fees to compensate such eligible employees. The Defendants deny the Plaintiff’s allegations, and deny that they are liable to the Plaintiff for any of the back pay, damages, costs or attorneys’ fees sought.

II. COMPOSITION OF THE COLLECTIVE ACTION CLASS

The named Plaintiffs seek to sue on behalf of themselves and also on behalf of other employees with whom they are similarly situated. Specifically, under the federal law, the Plaintiff seeks to sue on behalf of any and all **current and former employees of Defendants, who worked as First Level Officers or in other similar non-managerial, non administrative positions on or after February 11, 2002.**

III. YOUR RIGHT TO PARTICIPATE IN THE LITIGATION

If you fit within the definition above, you may join this case (that is, you may "opt-in"). by completing and mailing the attached “Consent to Become Party Plaintiff” form to Plaintiffs’ counsel at the following address:

PLAINTIFFS' COUNSEL

William C. Rand, Esq.

LAW OFFICE OF WILLIAM COUDERT RAND

711 Third Avenue, Suite 1505

New York, New York 10017

Telephone: (212) 286-1425; Facsimile: (212) 599-7909

E-mail: wcrand@wcrand.com

The form must be sent to Plaintiffs’ counsel in sufficient time to have Plaintiffs’ counsel file it with the federal court on or before the date that is 65 days from _____ [Insert the date 65 days after the date of mailing of the notice] If you fail to return the Consent to Become Party Plaintiff form to the Plaintiffs’ counsel in time for it to be filed with the federal court on or before the above deadline, you may not be able to participate in this lawsuit.

IV. EFFECT OF JOINING THIS ACTION

If you choose to join in this case, you will be bound by the Judgment, whether it is favorable or unfavorable.

The attorney for the class plaintiffs is being paid on a contingency fee basis, which means that if there is no recovery there will be no attorney's fee. If there is a recovery, the attorney for the class will receive a part of any settlement obtained or money judgment entered in favor of all members of the class. If you sign and return the Consent to Become Party Plaintiff form attached to this Notice, you are agreeing to designate the class representative as your agent to make decisions on your behalf concerning the litigation, the method and manner of conducting this litigation, the entering of an agreement with Plaintiffs' counsel concerning attorney's fees and costs, and all other matters pertaining to this lawsuit. These decisions and agreements made and entered into by the representative Plaintiff will be binding on you if you join this lawsuit. However, the Court has retained jurisdiction to determine the reasonableness of any contingency agreement entered into by the Plaintiff with counsel, and to determine the adequacy of the plaintiffs' counsel.

Furthermore, you can join this lawsuit by counsel of your own choosing. If you do so, your attorney must file an "opt-in" consent form by _____ [insert date that is 60 days from date of notice mailing].

V. TO STAY OUT OF THE LAWSUIT

If you do not wish to be part of the lawsuit, you do not need to do anything. If you do not join the lawsuit, you will not be part of the federal claims portion of this case in any way and will not be bound by or affected by the result (whether favorable or unfavorable). Your decision not to join this case will not affect your right to bring a similar case on your own at a future time. However, claims under the Fair Labor Standards Act must be brought within 2 years of the date the claim accrues, unless the employer's violation of the law was "willful," in which case the claim must be brought within 3 years.

VI. NO RETALIATION PERMITTED

Federal law prohibits Defendants from discharging or in any other manner discriminating or retaliating against you because you "opt-in" to this case, or have in any other way exercised your rights under the Fair Labor Standards Act.

VII. YOUR LEGAL REPRESENTATION IF YOU JOIN

If you choose to join this suit, and agree to be represented by the named Plaintiff through his attorney, your counsel in this action will be:

William C. Rand, Esq.
LAW OFFICE OF WILLIAM COUDERT RAND
711 Third Avenue, Suite 1505
New York, New York 10017
Telephone: (212) 286-1425
Co-counsel
Jeffrey M. Gottlieb, Esq.
Berger & Gottlieb
150 East 18th Street, Suite PHR
New York, New York 10003
Tel: (212) 228-9795
Attorneys for Plaintiffs

VIII. COUNSEL FOR DEFENDANTS

The counsel for Defendants is:

ORRICK, HERRINGTON & SUTCLIFFE LLP
Aimee B. Florin, Esq.
Jill L. Rosenberg, Esq.
666 Fifth Avenue
New York, NY 10103
Tel: 212-506-5000

IX. FURTHER INFORMATION

Further information about this Notice, the deadline for filing a Consent to Become Party Plaintiff, or answers to questions concerning this lawsuit may be obtained by writing or phoning the Plaintiffs' counsel at the telephone number and address stated in Paragraph 6 above.

THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE FEDERAL DISTRICT COURT, HONORABLE JUDGE THOMAS P. GREISA. THE COURT HAS TAKEN NO POSITION IN THIS CASE REGARDING THE MERITS OF THE PLAINTIFFS' CLAIMS OR OF THE DEFENDANTS' DEFENSES.

DATED: _____, 2008

HONORABLE _____

U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EXHIBIT B TO RAND DECLARATION

-----X	
EUGENE LUMLEY,	:
Individually and on Behalf of All Other Persons	:
Similarly Situated,	:
	:
Plaintiffs,	:
	:
-against-	:
	:
UNITED STATES TRUST COMPANY, N.A.,	:
BANK OF AMERICA, N.A. and	:
JOHN DOES #1-10, Jointly and Severally,	:
	:
Defendants.	:
-----X	

CONSENT TO BECOME PARTY PLAINTIFF

By my signature below, I hereby authorize the filing and prosecution of the above styled Fair Labor Standards Act action in my name and on my behalf by the above representative Plaintiff and so designate the collective class representative as my agent to make decisions on my behalf concerning the litigation, the method and manner of conducting this litigation, the entering of an agreement with the Plaintiffs' counsel concerning attorneys' fees and costs, and all other matters pertaining to this lawsuit.

Printed Name

Signature

Street Address

Telephone

City, State, Zip code

Date

PLEASE RETURN THIS FORM FOR FILING WITH THE COURT BY ____ 2008
TO:

William C. Rand, Esq.
LAW OFFICE OF WILLIAM COUDERT RAND
711 Third Ave., Suite 1505
New York, New York 10017
(Phone) (212) 286-1425; (Fax) (212) 599-7909
Attorneys for Plaintiffs